

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SOFIA A. WILLIAMS,

Plaintiff,

v.

GOLD COAST HOTELS AND CASINOS
d/b/a GOLD COAST HOTEL AND
CASINO, *et al.*,

Defendants.

Case No. 2:11-CV-2112-KJD-CWH

ORDER

Presently before the Court is the Motion to Dismiss or for a More Definite Statement (#12) of Defendants Gold Coast Hotels and Casinos (“Gold Coast”) and Boyd Gaming Corporation (“Boyd Gaming”). Plaintiff filed a response in opposition (#17) to which Defendants Gold Coast and Boyd Gaming replied (#22). Plaintiff also filed what appears to be a reactionary Motion for Summary Judgment (#16). Defendants filed a response in opposition (#26). Since Plaintiff’s motion for summary judgment has been filed early in the proceedings before discovery was commenced and because it is not supported with admissible evidence demonstrating that no genuine issue of material fact prevents the Court from granting the motion, it is denied.

1 I. Background

2 The Court attempts to draw the background from Plaintiff's prolix, *pro se* complaint. The
3 Court construes the complaint liberally, as it must when considering the briefing of a *pro se* party.
4 Despite Defendants' characterizations, the complaint is not hard to read. It is handwritten in
5 extremely tidy and legible print. The complaint's main flaw come from its organization and
6 Plaintiff's use of legal conclusions rather than facts. The complaint is essentially broken into three
7 sections: (1) a list of defendants with a list of causes of actions she wishes to assert against each
8 defendant; (2) a separate list of five counts asserting violations of her rights by defendants which
9 provides more facts to support her legal conclusions; and (3) a twelve page supplement containing
10 mostly facts without an indication of which causes of action they belong to.

11 It appears that Plaintiff was hired as a "casino dealer" by Defendant Gold Coast on or about
12 December 16, 2000. Plaintiff asserts that she was discriminated against during her term of
13 employment because of her gender, national origin (Cyprus), disability and was also retaliated
14 against for complaining about the discrimination. The alleged discrimination consisted of a hostile
15 work environment and disparate treatment. Plaintiff also asserts that the working environment was
16 extremely unhealthy for employees due the amount of smoke and lack of oxygen.

17 Plaintiff asserts that she was terminated on or about July 27, 2009 due to false complaints
18 about her by customers and co-workers. Plaintiff then filed a charge of discrimination with the Equal
19 Opportunity Employment Commission on or about May 14, 2010. She then filed the present
20 complaint on or about December 29, 2011. Plaintiff named Gold Coast, Boyd Gaming Corporation
21 (the parent corporation of Gold Coast), the Occupational Safety and Health Administration ("Nevada
22 OSHA") of the State of Nevada, and the United States of America as defendants. She asserts various
23 violations of her civil rights under 42 U.S.C. § 1983, and Title VII of the Civil Rights Act of 1964
24 ("Title VII"), and the Americans with Disabilities Act ("ADA"). She also asserts various state law
25 causes of action such as fraud and conspiracy. She also asserts claims for murder and attempted
26 murder. Defendants have now moved to dismiss her claims.

1 II. Standard for a Motion to Dismiss

2 In considering a motion to dismiss, “all well-pleaded allegations of material fact are taken as
3 true and construed in a light most favorable to the non-moving party.” Wyler Summit Partnership v.
4 Turner Broadcasting System, Inc., 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).

5 Consequently, there is a strong presumption against dismissing an action for failure to state a claim.

6 See Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted).

7 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
8 as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937,
9 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Plausibility, in the
10 context of a motion to dismiss, means that the plaintiff has pleaded facts which allow “the court to
11 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

12 The Iqbal evaluation illustrates a two prong analysis. First, the Court identifies “the
13 allegations in the complaint that are not entitled to the assumption of truth,” that is, those allegations
14 which are legal conclusions, bare assertions, or merely conclusory. Id. at 1949-51. Second, the
15 Court considers the factual allegations “to determine if they plausibly suggest an entitlement to
16 relief.” Id. at 1951. If the allegations state plausible claims for relief, such claims survive the motion
17 to dismiss. Id. at 1950.

18 III. Analysis

19 A. Count I: Wrongful Termination

20 The only potentially viable cause of action in Count I is Plaintiff’s claim for wrongful
21 termination. However, Plaintiff has not alleged that she has a written employment contract. In
22 Nevada, absence of a written employment agreement gives rise to the presumption that employment
23 is at-will. See Brooks v. Hilton Casinos, Inc., 959 F.2d 757, 759 (9th Cir. 1992)(applying Nevada
24 law); Vancheri v. GNLV Corp., 777 P.2d 366 (Nev. 1989). Without at least an allegation that the
25 employer expressly or impliedly agreed with the employee that employment is for an indefinite term
26 and may be terminated for cause only or in accordance with established policies and procedures,

1 Plaintiff has failed to state a claim for wrongful termination. See D'Angelo v. Gardner, 819 P.2d
 2 206, 211 (Nev. 1991). “Generally, an at-will employment contract can be terminated whenever and
 3 for whatever cause by an employer without liability for wrongful discharge if the employment is not
 4 for a definite term and if there is no contractual or statutory restrictions on the right of discharge.”
 5 Smith v. Cladianos, 752 P.2d 233, 234 (Nev. 1988). Thus all of Plaintiff’s claims in Count I must be
 6 dismissed because she has only alleged at-will employment. Any other allegations lack factual
 7 substance enough to state a claim upon which relief may be granted. Therefore, Count I is dismissed
 8 as to all parties.

9 B. Count II

10 Count II appears to attempt to state a claim under Title VII for sexual harassment and
 11 discrimination based on sex, sexual orientation, gender, race, color, national origin, religion and
 12 disability. Before a district court may have jurisdiction over any Title VII claim, including sexual
 13 harassment claims, a plaintiff must have exhausted her administrative remedies, by “filing a timely
 14 charge with the EEOC, or the appropriate state agency.” B.K.B. v. Maui Police Dep’t, 276 F.3d
 15 1091, 1099 (9th Cir. 2002); See 42 U.S.C. 2000e-5. The crucial element of a charge of
 16 discrimination is the charge’s factual statement. B.K.B., 276 F.3d at 1100. Allegations of
 17 discrimination not included in plaintiff’s administrative charge may not be considered by a federal
 18 court unless the new claims are like or reasonably related to the allegations contained in the new
 19 charge. Id., citing EEOC v. Farmer Bros. Co., 31 F.3d 891, 899 (9th Cir. 1994).

20 In the present action, Plaintiff’s Charge of Discrimination checked boxes for discrimination
 21 based on sex, national origin, disability and retaliation. Additionally, looking to the facts stated in
 22 the charge, Plaintiff stated facts which would alert an employer that Plaintiff was alleging claims of
 23 discrimination based on her national origin and sex. Further the statement of facts shows that
 24 Plaintiff alleged that she was being retaliated against for complaining of discrimination and was also
 25 alleging disability discrimination. Further, the Court finds that she has adequately pled causes of
 26 action in her complaint arising under Title VII for gender or sex discrimination, national origin, and a

1 hostile work environment based on sex, gender and national origin. Furthermore, the complaint
2 adequately states claims for relief based on retaliation.

3 However, the Charge of Discrimination does not mention any claim of discrimination based
4 on race, color or religion. Therefore, any asserted causes of action based on those claims is
5 dismissed. Additionally, the Charge does not mention Defendant Boyd Gaming. “[I]n the absence
6 of special circumstances, a parent corporation is not liable for the Title VII violations of its wholly
7 owned subsidiary.” See Assoc. of Mexican-American Educators v. Cal., 231 F.3d 572, 582 (9th Cir.
8 2000)(quoting Watson v. Gulf & Western Inds., 650 F.2d 990, 993 (9th Cir. 1981)). Plaintiff has
9 failed to establish any special circumstances. Therefore, all claims alleged against Boyd Gaming are
10 dismissed.

11 Furthermore, any claim for discrimination based on a discrete act must be filed within 300
12 days of the date Plaintiff filed her charge, May 14, 2010. See Nat’l R.R. Passenger Corp. v. Morgan,
13 536 U.S. 101, 114-15 (2002). Therefore, any claims that arose based on actions before that date are
14 dismissed. However, Plaintiff’s claims based on a hostile work environment need not be limited by
15 this provision, because it is composed of a series of separate acts that collectively constitute one
16 unlawful employment practice. See id. at 116-19. Therefore, in resolving the claims for a hostile
17 work environment, the Court or finder-of-fact may consider conduct that arose outside the 300-day
18 period as long as it related to the claim. See id. at 116-17.

19 Finally, all other claims asserted in Count II are dismissed for failure to state a claim upon
20 which relief may be granted.

21 C. Count III

22 It is unclear whether Plaintiff intends to bring her claims found in Count III for violations of
23 federal or state regulations regarding health and hazardous working conditions. However, under
24 either framework the Court dismisses the claims. First, 29 U.S.C. § 660(c)(2), pertaining to
25 Occupational Health and Safety regulations, allows any employee who believes that she has been
26 discharged or otherwise discriminated against by any person for asserting rights under OSHA

1 regulations “to file a complaint with the Secretary alleging such discrimination” within thirty (30)
2 days of the alleged discriminatory act. Plaintiff does not dispute that she did not file a complaint in
3 accordance with section 660. Furthermore, even if she had, the Secretary has the right to bring an
4 action in federal court on the employee’s behalf, not the employee herself. See 29 U.S.C. §
5 660(c)(2). Thus, any claims brought by Plaintiff for retaliation or injury under 29 U.S.C. § 651, *et*.
6 *seq.*, are dismissed.

7 Similarly, in the state of Nevada, authority for enforcement of OSHA provisions is given to
8 the state agency. See NRS § 618.825. Any employee who files a complaint about an OSHA
9 violation and is subject to discipline or discharge by his or her employer may file a complaint with
10 the Division Administrator, who may investigate and, if required, bring an action. See NRS §
11 618.445 (1) and (2). Furthermore, such complaints must be filed within thirty (30) days of the
12 violation. See NRS § 618.445(2). Therefore, Plaintiff’s claims arising under Count III must be
13 dismissed.

14 D. Count IV

15 The claims, if any, in Count IV are dismissed, except to the extent that Plaintiff asserted facts
16 that may apply to her discrimination claims. Otherwise, Count IV reads more like a list of her
17 general disagreements with management and Plaintiff fails to state actionable claims.

18 E. Count V

19 To the extent Plaintiff seeks to state a claim for disability discrimination under the ADA, the
20 Court must dismiss this Count, because Plaintiff has failed to allege a *prima facie* case. In order to
21 adequately allege a violation of the ADA, Plaintiff must assert: (1) that she suffers from a disability;
22 (2) that she is otherwise qualified to perform essential functions of employment, with or without
23 reasonable accommodation; (3) that she suffered an adverse employment action; (4) that a causal
24 connection exists between the adverse employment action and the disability. See Snead v. Metro.
25 Prop. & Cas. Ins. Co., 273 F.3d 1080, 1094 (9th Cir. 2001). Here, Plaintiff has only made the bare
26 assertion that she is disabled without legibly identifying her disability. Further, Plaintiff has not

1 alleged the causal connection between her disability and her termination. Accordingly, this claims is
2 dismissed with leave to amend.

3 F. Other Claims

4 To the extent that Plaintiff has asserted other claims, they are dismissed for failure to state a
5 claim. Though the pleading is written on the Court's form for *pro se* civil rights complaints, Plaintiff
6 does not appear to assert any specific violations of her civil rights by specific individuals. In fact, the
7 only "state actor" identified in the complaint is the state office of OSHA. Therefore, any claims
8 arising under 42 U.S.C. § 1983 against other defendants are dismissed.

9 Furthermore, to the extent that Plaintiff attempts to bring claims for "murder" or "attempted
10 murder" for the death of a fellow dealer, who Plaintiff believes was sickened by the physical
11 environment of the Gold Coast, they must be dismissed, because Plaintiff lacks standing to seek
12 relief for his injuries. To the extent that Plaintiff asserts claims for fraud, those claims must be
13 dismissed, because Plaintiff failed to state with particularity the circumstances constituting fraud.
14 See Fed. R. Civ. Pr. 9(b). Finally, Plaintiff's claims for conspiracy must be dismissed, because she
15 has not alleged with any particularity that Defendants reached some explicit or tacit understanding or
16 agreement to accomplish a wrongful goal. See Goodwin v. Executive Trustee Servs., LLC, 680 F.
17 Supp.2d 1244 (D. Nev. 2010).

18 G. Summary

19 Plaintiff's only remaining claims are those for sex or gender discrimination, national origin
20 discrimination and retaliation arising under Title VII. All other claims against Defendants Gold
21 Coast and Boyd Gaming are dismissed.

22 IV. Conclusion

23 Accordingly, IT IS HEREBY ORDERED that Defendants Gold Coast and Boyd Gamings'
24 Motion to Dismiss or for a More Definite Statement (#12) is **GRANTED in part and DENIED in**
25 **part;**
26

1 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (#16) is
2 **DENIED;**

3 IT IS FURTHER ORDERED that any amended complaint be filed within fourteen (14) days
4 of the entry of this order.

5 DATED this 4th day of September 2012.

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9 Kent J. Dawson
10 United States District Judge
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